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Libraries, Authors, and Literary Estates: The Complex Case of *Rosenbach v. Sendak* (2016)

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Abstract

This research examines a lawsuit filed by the Rosenbach Museum and Library of Philadelphia in 2016 against the Estate of Maurice Sendak (1928–2012) to determine the distribution of some of Sendak's collection of rare books. In the lawsuit, the Rosenbach claimed the executors of the Sendak estate had withheld a portion of the rare books to which it was entitled under Sendak's will. This paper suggests possible ways in which institutions such as libraries, archives, and museums might anticipate and address some of the ownership-related problems that arise during the acquisition and/or loss of collections of an artist or author after death.

Overview

Few children's artists could be said to have had more cultural impact on children's literature in the 20th century than Maurice Sendak (1928–2012). He was, as Margalit Fox noted in her *New York Times* obituary, "[w]idely considered the most important children's book artist of the 20th century" (2012). Summarizing his contributions, Fox commented that it was Sendak "who wrenched the picture book out of the safe, sanitized world of the nursery and plunged it into the dark, terrifying and hauntingly beautiful recesses of the human psyche" (Fox, 2012). Sendak's legacy was unique in children's literature, and he was deeply concerned with protecting his reputation and his art for the future, a burden that he seemed to have felt was largely his alone (Roughen, 2015). This analysis focuses on Sendak's concerns about the future of his work in light of the probate case, which came before the State of Connecticut in the District of Northern Fairfield County and was decided on the 25th day of October, 2016. The final decision of Judge Joseph A. Egan was that what is now known as The Rosenbach of the Free Library of Philadelphia (formerly and referred to below as "The Rosenbach Museum and Library" or the "Rosenbach") would receive only a portion of the items to which it had argued it was justly entitled under Sendak's will, which was a significant loss to the institution (*Estate of: Maurice Sendak*, 2016).

Commenting on the apparent dearth of writings on the administration of the estates of children's literature authors on his blog, prominent children's literature scholar Philip Nel notes that someone ought to edit a collection of essays to be entitled *In the Event*

of My Death: The Legal and Literary Afterlives of the Great Children's Writers (2015, para. 9). Nel mentions other examples of cases in which legal battles arose posthumously, such as *Dr. Seuss Enterprises v. Penguin Books* (1997), which involved a parody of *The Cat in the Hat* (para. 9). Much has been written by legal experts on the kind of issues that arise during the probate process and the various scenarios that commonly lead to litigation, but relatively little has been published on this topic in the context of libraries and related institutions. When problems do develop, they can be associated with complex legal issues. An example is the case involving the estate of Laura Ingalls Wilder, author of *Little House on the Prairie*, in which the Wright County Library System, a beneficiary under her will, was forced to grapple with the intricacies of federal copyright law (Margolis, 2001; Simon, 2000). And so this research considers practical ways in which institutions such as libraries, archives, and museums might prevent some of the problems that arise during the acquisition and/or loss of important collections of an artist or author after death.

Sendak, the Rosenbach, and the Sendak Foundation

Understanding the long-term wishes of a library's patron, donors, and benefactors, whose work might comprise an important portion of a library's or museum's collection, can help library management anticipate legal difficulties, particularly if issues are addressed early on. Although the Sendak case is unusual in many regards, there is sufficient evidence available that this very important patron of the

library had ambivalent feelings about institutions that function as cultural arbiters, which may have been predictive of the Rosenbach's loss of the Sendak collection, and of the ensuing litigation.¹

When a library, museum, or archive sues the estate of one of its major benefactors to enforce the terms of a will in which it is a beneficiary, it is reasonable to assume that the institution has tried other solutions and is at an impasse. Negotiations may have fallen through, or some danger may have appeared on the horizon, which could result in harm or loss if immediate action is not taken. Even when relations were strained, Sendak had not abandoned the Rosenbach entirely; in fact, when he died on May 8, 2014, a provision in his will was triggered that authorized the payment of \$2 million to the Rosenbach, which, along with his earlier gift of \$1 million, made up a substantial part of the Rosenbach's total endowment of \$7.5 million; Sendak had also made significant bequests of works by William Blake and Herman Melville worth millions of dollars (Dobrin, 2014).

However, his estate planning to maintain his legacy centered, not on the Rosenbach, but on an independent foundation, the Sendak Foundation, a nonprofit that supports scholarships for artists. Not long after Sendak's death, the foundation, which is virtually the same entity as the estate, recalled the collection of Sendak's original artwork, with over 10,000 items, which had been on deposit at the Rosenbach. This rich collection also included dummy books, correspondence, and manuscripts. Though Sendak had mentioned his interest in establishing a house museum in his home in Ridgefield, Connecticut, the foundation's demand that the Rosenbach return the deposited material was an unexpected blow to the institution (Dobrin, 2014).

Sendak may have first become attached to the idea of a house museum many years earlier when he made visits to the Hill Top home of Beatrix Potter in Cumbria in the English Lake District.² Though the deposited collection had always been contractually subject to recall at any time, the Rosenbach was deeply invested in Sendak. The library had produced a multitude of Sendak exhibits over the years and had named its new wing "The Maurice Sendak Building" after him. So it is not surprising that at some point the Rosenbach felt it should press to carry through the other provisions of the will, which bequeathed certain valuable items to it, leading it

eventually to sue the estate of Sendak to enforce these bequests.

Sendak apparently felt that he did not always receive an appropriate level of support from some librarians. A sense of the complex nature of his feelings can be seen in a speech he gave, the Mary Hill Arbuthnot Lecture, in 2003:

And then, too, there were the Giant Lady Librarians—those guardians of the gates who kept a watchful eye on what we were producing. Their scrutiny could lead to conflicts of taste as they tried to keep our little world uncontaminated and idealistic, but these conflicts only sharpened our sense of mission. (p. 18)

Sendak's statement, of course, referred to a time when librarians acted as gatekeepers of "good taste" in children's books, and when their recommendations could determine the success or failure of an author. As Laura Miller observed in a June 15, 2008, article in the *New York Times*, librarians and libraries were possibly "the mightiest force in the children's book world until the cutbacks of the 1970s and a boom in parental book-buying during the 1980s knocked them from their throne" (p. 18). However, K. T. Horning in her article entitled, "The Naked Truth: Librarians Stood by Maurice Sendak," argues that librarians championed his work (2012). Sendak was well known for courting controversy, but he was also a famous curmudgeon who could harbor a grudge; this was especially true when he felt that his work was unjustly censored, such as when *In the Night Kitchen* (1970) was published, and portions of the nude images of its central character, Mickey, were subsequently painted over in some libraries.

Sendak's Relationship with the Rosenbach

Sendak's relationship with the Rosenbach began early in his career when he heard about its unique collection through a Philadelphia librarian and subsequently discovered works by many of his favorite authors there, including James Joyce, Herman Melville, and William Blake. Sendak was inspired to make the Rosenbach the chief depository for his artwork (Dobrin, 2014). The Rosenbach provided him with an unusual level of access, including the privilege of reclining as he read his favorite authors on the original fur-covered beds of the founders of the collection, brothers Philip and A. S. W. Rosenbach. The Rosenbach stimulated Sendak's imagination, and its

resources inspired him and helped him develop as a collector of rare books and memorabilia of his childhood, such as the numerous items associated with Mickey Mouse, which he kept in his home. Sendak allowed himself to be extensively interviewed and recorded by representatives of the library, and the Rosenbach had hoped Sendak had built up a level of trust with it.

However, at some point in time, according to papers filed by the Sendak Foundation, Sendak began to question whether the Rosenbach should be the institution to archive the bulk of his creative works. According to Lynn Caponera, Sendak's devoted caretaker and assistant for many years, Sendak would have wanted most of his manuscripts and drawings at his house in Ridgefield, as opposed to the Rosenbach, whose ability to care for his work and commitment to it he had come to question: "[h]e felt that they weren't taking him seriously as an artist—that he just did kids' books and was not seen in the context of being a great artist" (Kennedy, 2014, para. 7). Whether Sendak actually said this about the Rosenbach is apparently not documented, but Caponera's comments echo more general statements he made throughout his life, without reference to a specific institution.

Sendak's Will, 2011

Sendak's final wishes, in his Last Will and Testament, were dated February 6, 2011. This 2011 will is straightforward about his intentions regarding his property at 200 Chestnut Lane, Ridgefield, Connecticut, which was also the address of his principal residence: "It is my wish that the Maurice Sendak Foundation Inc. operate said property as a museum or similar facility, to be used by scholars, students, artists, illustrators and writers," and to be accessible to the public (Dobrin, 2014, para. 16). The will includes language that directs the estate and the Rosenbach to continue to collaborate together. The disagreement that was the basis of the lawsuit primarily involved the interpretation of a provision of Sendak's will giving the Rosenbach his "rare edition books," language that is more fully shown in context in the following section of the will:

D. I give and bequeath the following described property which I may own at the time of my death unto THE ROSENBACH MUSEUM AND LIBRARY, located in Philadelphia, Pennsylvania, for its general purposes:

1. (a) Such articles of my Mickey Mouse collection, as my executors, in their sole and absolute discretion, shall select.
- (b) I direct that the remaining balance of my Mickey Mouse Collection shall be disposed of pursuant to the provisions of subparagraph "F" hereof.
2. *All of my rare edition books, including, without limitation, books written by Herman Melville and Henry James* [emphasis added] (p. 1, ¶ D.1-2, 2011).

As noted on Ian Jackson's website, citing John Carter's *ABC for Book Collectors*, "The definition of 'rare books' is a favorite parlour game among bibliophiles—and this applies *a fortiori* to courtroom casuists." In this proceeding, the expert witnesses, when asked to shed light on the meaning of these words by the court, were John Windle, a respected San Francisco rare book dealer, for the Sendak Estate, and Daniel Traister, an equally respected rare book librarian from the University of Pennsylvania, for the Rosenbach. Traister asserted that "all the items on the disputed list were rare edition books," while Windle claimed that "some of the items were not rare, some were not editions, some were not books or, in some cases, a combination of the above" (Dobrin, 2016, para. 15).

Traister and Windle testified that neither of them used the term "rare edition books," but the probate court judge, Joseph A. Egan, concluded that it was a term with special meaning to Sendak, which required that the court "take into account its own observations" in light of the testimony of the experts (*Estate of: Maurice Sendak*, 2016, p. 3). Both the Rosenbach and the estate provided an identical list of disputed books, and the court reviewed each book on the list to determine "if each item is a book, if it is rare and if it is an edition book" (*Estate of: Maurice Sendak*, 2016, p. 2). Judge Egan did not spell out his reasoning in this case, but the criteria reflected Windle's comment. The judge finally awarded 252 out of the 340 items in dispute to the Sendak Estate. Jeffrey T. Golenbock, a lawyer for the Sendak Estate, commented, "We are hopeful this could be the end [of the dispute], and the foundation can go ahead with its mission of perpetuating the legacy of Maurice Sendak" (Dobrin, 2016, para. 6).

Some Possible Solutions and Lessons Learned

What lessons can we learn from this case? Since the court did not memorialize its analysis of the will, the court's interpretation of the problematic language is unpublished, but it is clear that the term "rare edition books" in the will should have been more precise. But Sendak resisted including a more definite term, according to his attorney, because he thought the term was clear to him. He also did not want to provide a long list of the items identified as "rare edition books." Precise language is the standard solution that most lawyers would advise. Other potential approaches might be to include language that specified as rare the books that were found on appraisal to be worth more than a certain amount or that were printed before a certain date or that were in a particular condition or special bindings; but it would have been better to say that a legatee could select a specific number of books before the remainder went to another legatee or were disposed of in a certain way. As Patrick Scott, former director, Rare Books & Special Collection, University of South Carolina Libraries, observed, "There's no point in having an inoperable subjective category for a will, even if all parties are proceeding in good faith" (personal communication, Dec. 4, 2018).³

More difficult to anticipate were the effects on Sendak's will of his longstanding anxieties about librarians as the cultural and moral arbiters of children's literature. These probably swayed him against leaving his collections with the Rosenbach, just as his vision of a museum at his house influenced him toward a different plan. The disputed wording in the remaining provision, about "rare edition books," seems like an attempt to fence off his earlier commitment to the library. Other libraries with large collections on deposit may be able to avert this kind of disappointment through careful stewardship and relationship maintenance, especially during periods when a library's leadership changes, but no effort can ultimately prevent a donor's changed ambitions.

A third question for libraries with deposited or loaned materials relates to the library's documentation on the original deposit. In the corporate world,

audits may be done to determine ownership (title, rights) associated with a company's intellectual property. This is not, however, the norm for libraries. Developing some kind of outreach to cultivate patrons who have made deposits of important collections requires coordination. Although libraries do not usually have master lists of all deposits, and they do not process or catalog individual items or collections on deposit, they may have inhouse files with records of items owned by specific donors, and archives may make an unpublished finding list. Some libraries still accept collections on deposit as a gesture of goodwill, or in the hope of future donation. It can sometimes be in the interest of an author to deposit self-generated material so that it may later be a tax-deductible donation for their heirs or assigns. But any deposit risks leaving materials in a kind of legal limbo, and such deposits are generally unwise without "an ironclad agreement as to length of deposit time, the library's obligations for inventory control, conditions of use while deposited, current and future ownership, including future ownership of intellectual rights, insurance, etc." (P. Scott, personal communication, Dec. 4, 2018).

Conclusion

Arthur Conan Doyle once said that "[i]t is easy to be wise after the event" (Speake, 2015, p. 349). Nonetheless there are times when libraries, archives, and museums must resolve issues through the court system, involving even their most generous supporters. However, in the Rosenbach-Sendak case, since the Probate Court made the terms of the settlement confidential, much of what happened in this case must be reconstructed from the available evidence. Sendak did not make such reconstruction of the meaning of the disputed language of the will any easier since in a provision of his will he directed his executors "to destroy, immediately following my death, all of my personal letters, journals, and diaries" (2011, p. 1 ¶ 3). It may be that we will never learn the full story in this case. Nonetheless, what we do know provides some instruction regarding the caution that libraries should take when accepting items on deposit, the importance of knowing one's patrons, as well as relatively simple approaches to address long-term issues of ownership of collections on deposit.

Notes

1. See, for example, Jonze, S. (2012, May 9). RIP Maurice Sendak: 2009 interview by Spike Jonze. Retrieved December 15, 2018, from <https://www.dazeddigital.com/artsandculture/article/13407/1/rip-maurice-sendak-2009-interview-by-spike-jonze>

2. Sendak was a great admirer of Beatrix Potter. A photo exists of Sendak emulating her pose in an old black and white photo of her standing in the doorway of Hill Top. See Nickel, S. (2016, April 5). Maurice Sendak and Beatrix Potter [Blog Post]. Retrieved from <https://whatwason.com/2016/04/05/what-was-on-my-14/> In his will Sendak bequeathed both Beatrix Potter's and William Heelis's walking sticks to the Beatrix Potter Society in England (2011, p. 2 ¶ 2).
3. The author thanks Dr. Patrick Scott, Distinguished Professor of English, Emeritus, at the University of South Carolina, and the former director of the University's Irvin Department of Rare Books & Special Collections, for his invaluable insights and assistance regarding the preparation of this article, especially with respect to the section on Some Possible Solutions and Lessons Learned.

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